



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Mark Brodeur, Community & Economic Development Director
MEETING DATE: January 21, 2015
SUBJECT: Ordinance to authorize a pilot program for sidewalk dining and associated fee resolution

CEQA: Draft ordinance involves negligible or no expansion of use, and thus qualifies for an exemption from the California Environmental Quality Act under Class 1, as set forth in section 15301 of the CEQA Guidelines.

RECOMMENDATION

1. Hold second reading and adopt a sidewalk dining one-year pilot program ordinance that temporarily amends Municipal Code Chapter 15.16.045 -- Sidewalk Seating and Chapter 15.16.040 – Sidewalk Encroachments.
2. Adopt a resolution establishing fees for sidewalk dining.

DISCUSSION

On December 3, 2014 and on December 17, 2014, the City Council considered the merits of a substantive rewrite of the ordinance pertaining to outdoor seating adjacent to eating establishments. During those meetings, Council provided staff with considerable suggested modifications to the revised ordinance proposal. Direction included implementing a one-year Pilot Program which would give the Council the ability to assess the effectiveness of the proposed ordinance changes.

Measuring the success or failure of a Pilot Program can be difficult. Suggested parameters that could be reported at the end of the Pilot Program to assist the Council in deciding if the Sidewalk Dining Pilot Program should be made permanent or amended include:

1. How many Sidewalk Dining Permits were applied for and granted?
2. How many times were approved Sidewalk Dining Permits appealed to the Planning Commission?
3. How many times did the Zoning Administrator have to unilaterally remove furniture from the City's public sidewalk?
4. How many sidewalk dining complaints were lodged with the Zoning Administrator and what was the nature of the complaints.
5. Did participating eating establishments increase overall retail sales? Each participating establishment will be asked to qualitatively address the overall success or failure of the Pilot Program.

6. How many existing eating establishments permanently removed sidewalk dining furniture?
7. A letter from the Chamber of Commerce that reflects what they have heard from all members about the Pilot Program.

The modifications to the proposed sidewalk dining ordinance pilot program included for second reading are in response to comments received from the City Council during its meeting on December 3rd and during the first reading of the ordinance on December 17, 2014. The changes are technical and editorial in nature, and do alter the substance of the ordinance, and thus a new first reading is not required. A summary of the proposed ordinance, approved by the City Attorney, was published in a newspaper of general circulation.

FISCAL IMPACT

Allowing sidewalk dining opportunities should result in a positive fiscal impact (additional sales tax revenues) for the City by adding patronage in the downtown area.

ATTACHMENTS

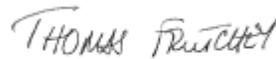
1. New Sidewalk Dining Ordinance/ Pilot Program & Ordinance Enacting Sidewalk Encroachment Ordinance Modifications
2. Resolution adopting fees for review and issuance of a sidewalk dining license.

RESPECTFULLY SUBMITTED:



Mark Brodeur
Community & Economic Development Director

REVIEWED BY:



Thomas Frutchey
City Manager

ORDINANCE NO. 15 –

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE CREATING
A PILOT PROGRAM TO TEMPORARILY AMEND PACIFIC
GROVE MUNICIPAL CODE CHAPTER 15.16 RELATING TO
SIDEWALK DINING ADJACENT TO EATING ESTABLISHMENTS**

WHEREAS, the City last amended its Municipal Code pertaining to Sidewalk Encroachments in 1965 by Ordinance 525 (New Series 2) and last amended its Municipal Code pertaining to sidewalk seating adjacent to eating establishments in 2013 by Ordinance 13-003; and

WHEREAS, the City of Pacific Grove enjoys year-round fair weather conducive to sidewalk dining; and

WHEREAS, eating establishments in commercial areas want to be permitted to serve their patrons out of doors and believe this activity enlivens the City, enhances revenues, and makes commercial areas more pedestrian friendly; and

WHEREAS, temporary amendment of Chapter 15.16 relating to sidewalk dining adjacent to eating establishments will enable a pilot period to examine impacts of modified regulations to better inform the Council as to whether this approach should be enacted on a continuing, long-term basis, and whether further modifications are warranted; and

WHEREAS, this measure allows the City Council to establish appropriate fees and conditions for use of the City's public sidewalks; and

WHEREAS, this ordinance is intended to enhance use of sidewalks while minimizing adverse impacts on the walkability of sidewalks by requiring specific setbacks and rules for placement of furniture on the public sidewalks; and

WHEREAS, this ordinance shall enable permitting and use of existing facilities involving negligible or no expansion of use, and thus qualifies for an exemption from the California Environmental Quality Act under Class 1, as set forth in section 15301 of the CEQA Guidelines.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. For the period beginning with the enactment of this ordinance, and ending on February 17, 2016 (designated the Pilot Period), the provisions of Chapter 15.16 of the Pacific Grove Municipal Code shall be modified as shown in Sections 3 and 4 of this ordinance. Beginning February 18, 2016, and thereafter, all provisions of Chapter 15.16 of

the Pacific Grove Municipal Code shall be enforced as it existed before enactment of this measure, without modification, unless Chapter 15.16 is otherwise amended.

SECTION 3. During the Pilot Period, only, Pacific Grove Municipal Code section 15.16.045 – Sidewalk Seating Adjacent to Eating Establishments – shall be amended as shown in this section. Text shown in *bold italics* shall be added, and text shown in ~~strikeout format~~ shall be deleted.

15.16.045 Sidewalk Seating and Sidewalk Dining ~~adjacent to eating establishments.~~

The *Zoning Administrator, after holding a duly noticed public hearing* ~~community development director~~ shall have the authority to allow, *deny*, or condition placement of tables, chairs, *benches, and other normally associated furniture to encroach* on public sidewalks ~~or similar areas adjacent to abutting eating establishments within the C-D, C-FH and C-1 zoning districts~~ *for sidewalk dining purposes within all commercial zoning districts*, subject to the following restrictions and conditions:

(a) Tables, chairs, benches, *umbrellas, waiter stands, barriers, tray stands, planters, trash receptacles, and other furniture normally associated with dining* (collectively hereafter for convenience, “furniture”) *may be placed on the sidewalk but* shall not be placed so as to obstruct the minimum unobstructed pedestrian *travel* width of the sidewalk *defined as a minimum of five feet. All applicable Americans with Disabilities (ADA) requirement minimums shall be met. Sidewalk dining furniture placed on the sidewalk shall be of a consistent design and employ similar materials and colors as approved by the City to complement all other approved sidewalk furniture and fixtures, such as street lights and bicycle racks, throughout the City.* ~~meeting ADA requirements.~~

(b) Furniture shall not be attached, *drilled into, adhered to, chained to*, or otherwise affixed to the sidewalk, *tree, pole, or* other furniture, or *to* any permanent structure or building.

(c) *Sidewalk dining furniture shall be placed immediately adjacent to and abutting the eating establishment and shall not be placed adjacent to the curb. Exceptions to this requirement may be made for self-serve seating (i.e., no table service).*

(d) *Eating establishments serving alcohol shall delineate and separate the sidewalk dining area with a non-affixed, removable barrier/fence (e.g. a planter box, rope, fence, or other material approved by the Zoning Administrator). Each such barrier shall be easy to remove and store. No barrier shall exceed 36 inches in height. Barriers shall not be chain link fencing, solid wood walls, cyclone fencing, or any material bearing advertising. Eating establishments that do not serve alcohol are not required to delineate the sidewalk dining area.*

(e) Eating establishments, and all others, are prohibited from making any modification to the public sidewalk such as staining the concrete, painting, or tiling. Minor patching of holes and cracks, and the elimination of trip and fall hazards, are to be referred to the Public Works Department for modification.

(f) Use of sound amplification on the exterior of an eating establishment is prohibited.

(g) Sidewalk dining and associated furniture as listed in paragraph (a) above is prohibited on any public sidewalk that is less than seven-feet wide. Further, sidewalk dining and associated furniture shall not occupy more than 45% of the gross total width of any public sidewalk.

(h) The eating establishment placing the furniture shall provide proof of public liability insurance, naming the City as an additional insured, in the amount and form subject to approval of the City Attorney.

~~*(i) Seating shall be limited to the area immediately abutting the eating establishment.*~~

(i) Businesses placing furniture shall be responsible for keeping the furniture and immediately surrounding area clean and presentable at all times, and to this end shall promptly clean and remove all litter, spillage, and other materials resulting from use of the furniture.

(j) Approved Sidewalk Dining Permits allowing ~~for~~ placement of furniture or associated furniture may be revoked by the ~~community development director~~ Zoning Administrator at any time, for violation of any of these restrictions or ~~and~~ conditions.

(k) Application for sidewalk dining and placement of furniture shall be made on a form provided by the ~~Community and Economic Development director~~ Department. The Zoning Administrator may refer the application to any City department, commission or committee for a recommendation. ~~Denial of an application may be appealed to the city manager. The decision of the city manager shall be final.~~ The decision of the Zoning Administrator shall be subject to direct appeal to the Planning Commission in accord with Pacific Grove Municipal Code sections 23.74.020(b) and 23.74.030.

(l) At least 10 days prior to the Zoning Administrator's public hearing on the Sidewalk Dining Permit, the property abutting the sidewalk location shall be posted with notice of the request for and pending decision on the Permit. Two identical notices shall be posted on public property within 200 feet of the property site in positions clearly visible to the public.

(m) Sidewalk Dining Permits are interruptible and terminable licenses for use granted by the City. No property interest shall be conveyed to the eating establishment or to any other person. The City shall have the right and power, acting through the Zoning Administrator, to revoke, prohibit, or limit operation and use of a Sidewalk Dining Permit at any time by reason of anticipated, threatened, or actual problems or conflicts in the use for the sidewalk area. Such circumstances may arise from, but are not limited to, changing patterns of sidewalk use, scheduled festivals or similar events, parades or marches, repairs to the street or sidewalk, or for any other reason.

(n) Sidewalk dining furniture, equipment, and other amenities must be removed from the sidewalk dining area for extended periods of non-use (two weeks or more). The City may require removal during special events, etc. The City shall have the right to unilaterally remove unapproved exterior furniture and/or equipment from the sidewalk dining space, and costs of removal shall be borne by the eating establishment.

(o) Sidewalk dining furniture, equipment, and other amenities shall be constructed of metal, unless an alternative material is approved in advance by the Zoning Administrator.

(p) Each eating establishment may use umbrellas provided each shall maintain the seven-foot minimum sidewalk clearance for the entire height of the umbrella. The base weight of the umbrella shall be of appropriate size and design to avoid tipping over in the wind. Freestanding gas heaters shall not be utilized where umbrellas are present, for fire safety. Umbrellas shall not bear commercial logos.

(q) Each Sidewalk Dining Permit shall require payment of two fees: (1) the general Encroachment Permit fee (a one-time fee for placing furniture on the public sidewalk); and (2) an annual Sidewalk Dining License fee associated with continued use of the public sidewalk. The City Council shall set both fees by resolution in its Master Fee Schedule.

(r) Applications for each Sidewalk Dining Permit must submit:

1. Description. A brief written description to include the name and address of the Eating Establishment, a description of the proposed sidewalk dining space, the number of tables and seats, whether the Eating establishments intends to serve alcohol, and whether water credits or water allocations are needed for the proposed Permit.

2. Site Plan. A plan, drawn to scale, showing the proposed sidewalk dining space including all tables, seats, associated furniture, and barriers; the plan

shall show all sidewalk clearance dimensions and elevations. Specifications shall be provided for any sidewalk heaters.

3. Photos or Drawings. *Color photos, renderings, and/or graphics shall show the setup, type of furniture, and materials to be used for all surfaces, including barriers or umbrellas.*

(s) The Zoning Administrator is authorized to place or modify conditions under this section on Sidewalk Dining adjacent to eating establishments to promote public health and/or safety, or to address handicapped access, safety issues, public utility placement, and unique site factors that apply to a specific location.

(t) Sidewalk dining sites that encroached on public sidewalks before enactment of this ordinance are required to comply with all Sidewalk Dining Permit requirements of this section, provided each site shall have a 12-month grace period to apply for the Sidewalk Dining Permit.

(u) Sidewalk Dining Permits and/or Encroachment Permits issued under this section do not afford an exclusive right for use by the eating establishment or its patrons. The general public may make reasonable temporary use of the area and furniture at that location provided this public use does not interfere with the Sidewalk Dining use.

SECTION 4. During the During the Pilot Period only, Pacific Grove Municipal Code section 15.16.040 – Sidewalk Encroachment – shall be amended as shown in this section. Text shown in ***bold italics*** shall be added, and text shown in ~~strikeout format~~ shall be deleted.

15.16.040 Sidewalk Encroachment

It is unlawful to construct, plant, or maintain any encroachment in a sidewalk space ***without an Encroachment Permit approved by the City Manager*** ~~except as may be authorized under Chapter 12.16 PGMC, and~~ ***except for such elements including city-sponsored amenities/activities, public utilities, mailboxes, bus shelters, and benches.*** ***Further, the City Manager may grant an Encroachment Permit, revocable at his will, to an owner of property abutting any public sidewalk in a commercially zoned district to install and maintain elements such as sidewalk dining furniture, sidewalk seating, awnings, flower planters and other pedestrian amenities that the Manager determines add convenience and comfort to the public using the sidewalk. No advertisements shall be permitted on the encroachments.*** ~~Utility poles, mail boxes, and telephone booths.~~
[Ord. 525 N.S. § 2, 1965]

SECTION 5. The City Council shall set the appropriate sidewalk license fee and sidewalk encroachment fee in the City's Master Fee Schedule.

SECTION 6. In accord with Article 15 of the City Charter, this ordinance shall take effect thirty days following passage and adoption hereof.

SECTION 7. The City Manager and City Clerk are directed to perform all tasks necessary to implement this ordinance. This measure may, but shall not be required to, cause republication of the Pacific Grove Municipal Code.

SECTION 8. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses, or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 21st day of January, 2015, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

RESOLUTION NO. 15-xxx

**A RESOLUTION OF THE PACIFIC GROVE CITY COUNCIL ADOPTING FEES
FOR REVIEW AND ISSUANCE OF A SIDEWALK DINING LICENSE**

FACTS

1. Pacific Grove Municipal Code (PGMC) Chapter 6.02 provides for the establishment of fees and charges for service; and
2. The City of Pacific Grove held a public hearing on January 21, 2015 regarding the establishment of a one-year Pilot Program for Sidewalk Dining; and
3. Notice of a Public Hearing to be held on January 21, 2015 was published in accordance with PGMC Chapter 6.02 and relevant California Government Code sections; and
4. The City desires to recover direct and indirect costs associated with providing application and permit services for sidewalk dining as well as compensate the public for private use of the public right of way; and
5. Each eating establishment applying for a Sidewalk Dining permit shall pay a one-time encroachment permit fee, as provided in the City's Master Fee Schedule; and
6. In addition, each such eating establishment shall pay an appropriate annual license fee; and
7. The City also desires to waive the annual license fee during the first three months of the Pilot Program to incentivize eating establishments to include sidewalk dining, in an effort to jump start the benefits of the program and to enable a valid assessment to be conducted during the Pilot Program and;
8. The Action proposed by this Resolution does not constitute a "Project" as that term is defined under California Environmental Quality Act (CEQA), CEQA Guideline section 15378.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
PACIFIC GROVE:**

1. The Council determines that each of the Facts set forth above is true and correct, and by this reference incorporates those Facts as an integral part of this Resolution.
2. The City Council establishes the annual fee for a Sidewalk Dining License at \$2.00 per square foot of public sidewalk per year, starting on May 22, 2016 (after the first three months of the pilot program). The City Council at its sole discretion may amend the License Fee as part of the annual Master Fee Schedule revision or from time to time.

3. The License Fee is an annual service fee; for administration and tracking purposes, if the program is continued after the end of the pilot period, the fee will be not prorated for applications made during various times of the year.
4. The fees established by this Resolution for a Sidewalk Dining License do not exceed the reasonable cost of providing the services for which the fees are charged.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 21st day of January 21, 2015, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney